

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	

PETITION FOR WAIVER

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Dated: December 20, 2005

TABLE OF CONTENTS

	Page
SUMMARY	i
I. BACKGROUND	2
II. DISCUSSION	4
A. Special Circumstances Warrant a Deviation from the 911 Call Routing Requirement	5
B. Granting a Waiver Is Consistent with the Policy Objectives Underlying the 911 Call Routing Requirement	6
C. Granting XO's Waiver is in the Public Interest	7
III. CONCLUSION.....	9

Summary

In this petition, XO Communications Services, Inc. (“XO”) seeks a limited waiver of Section 9.5(b)(2) of the Commission’s rules, 47 C.F.R. §9.5(b)(2), which requires providers of interconnected VoIP services to transmit all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller’s Registered Location, for a supplemental feature of its XO One IP-PBX service. The XO One IP-PBX service is a fixed interconnected Voice over Internet Protocol (“VoIP”) service that is fully compliant with the Commission’s E911 rules. However, the IP-PBXs used by XO to provide its XO One IP-PBX service, like most IP-PBXs on the market, have a built-in supplemental feature that, when activated by XO or by the subscribers themselves, permits subscribers to use any session initiated protocol (“SIP”) phone associated with the IP-PBX at a remote location (the “Supplemental Feature”). For example, activation of the Supplemental Feature permits employees in an office using XO’s IP-PBX service to unplug their office SIP phone at the end of the day and take it home, where they can place and receive calls as if they were still at the office.

The purpose of the Supplemental Feature is not to enable a primary line at the remote location, but rather to supplement the fixed XO One IP-PBX service by permitting users to maintain a virtual presence at the Registered Location (*e.g.*, the office) while they are at another location that already has a primary line with 911 service (*e.g.*, the home). Although the XO One IP-PBX service is fully 911 compliant at the Registered Location where it is the primary line service, it is not technically or operationally feasible to associate multiple Registered Locations with the service at this time, and thus there is no way to update the Registered Location to recognize remote use by one or more persons of SIP phones associated with the IP-PBX. XO is exploring technical means for recognizing multiple Registered Locations for the

same IP-PBX, but none are available at this time. However, the sophisticated business users who subscribe to the XO One fixed IP-PBX service do not rely on the Supplemental Feature for 911 functions, or use it to replace primary line services at remote locations. Therefore, the public interest would be served by granting XO a limited waiver of Section 9.5(b)(2) so that XO can continue to market and accept customers for the Supplemental Feature.

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PETITION FOR WAIVER

Pursuant to Section 1.3 of the rules of the Federal Communications Commission ("FCC" or "Commission"),¹ XO Communications Services, Inc. ("XO" or "Petitioner"), through its counsel, requests a limited waiver of the Commission's requirement that interconnected Voice over Internet Protocol ("VoIP") service providers transmit all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the customer's Registered Location as set forth in the Commission's *VoIP E911 Order*² for a supplemental feature of the IP-PBXs used XO to its XO One IP-PBX service that permits remote use of session initiated protocol ("SIP") phone services (the "Supplemental Feature"). Specifically, XO requests a waiver of Section 9.5(b)(2) of the Commission's rules, which requires providers of interconnected VoIP services to "transmit all 911 calls...to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location"³ for the Supplemental Feature.

¹ 47 C.F.R. § 1.3.

² *IP Enabled Services*, WC Docket No. 04-36; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Report and Order, FCC 05-116 (rel. June 3, 2005), ¶¶ 48-49 ("*VoIP E911 Order*").

³ 47 C.F.R. § 9.5(b)(2).

XO is not seeking a waiver of Section 9.5(b)(2) for its XO One IP-PBX service, which is a fixed interconnected VoIP service that is fully compliant with the Commission's E911 rules. Rather, XO seeks a limited waiver of Section 9.5(b)(2) only for the built-in Supplemental Feature of the IP-PBXs used by XO to provide its XO One IP-PBX service so that XO can continue to market and accept customers for the Supplemental Feature while XO explores a technically and operationally feasible means for recognizing multiple Registered Locations for the same service.⁴ As set forth below, XO has demonstrated good cause for grant of this waiver.

I. BACKGROUND

XO is a full service telecommunications provider serving business customers throughout the United States. XO offers a complete set of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting and Integrated voice and data services. XO provides service through its facilities-based broadband networks and Tier One Internet peering relationships. XO currently offers facilities-based broadband telecommunications services within and between more than 70 markets throughout the United States. XO is authorized by the FCC to provide interstate and international telecommunications services and, through one or more of its subsidiaries, is authorized to provide intrastate interexchange services virtually nationwide, and is authorized to provide competitive local exchange services in 47 states.

On May 16, 2005, the Commission released its *VoIP E911 Order*, which requires, *inter alia*, all providers of interconnected VoIP services to “transmit all 911 calls, as well as the ANI and the caller’s Registered Location, to the PSAP, designated statewide default answering

⁴ See *Enforcement Bureau Outlines Requirements of November 28, 2005 Interconnected Voice Over Internet Protocol 911 Compliance Letters*, WC Docket Nos. 04-36, 05-196, DA 05-2945 (rel. Nov. 7, 2005) (“*Enforcement Bureau Nov. 7, 2005 Notice*”).

point, or appropriate local emergency authority that serves the caller's Registered Location”⁵ The Commission noted that “all 911 calls” for purpose of complying with this requirement, includes “any voice communication initiated by an interconnected VoIP user dialing 911.”⁶ On November 7, 2005, the Enforcement Bureau reminded providers of interconnected VoIP service of the Commission's expectation that interconnected VoIP service providers “will discontinue marketing VoIP services, and accepting new customers for their service, in all areas where they are not transmitting 911 calls to the appropriate PSAP in full compliance with the Commission's rules.”⁷

The XO One fixed IP-PBX service is fully compliant with the Commission's E911 rules. In order to receive the XO One fixed IP-PBX service, a customer must have an IP-PBX installed at its Registered Location. These IP-PBXs, like most in the marketplace today, have a supplemental feature that, when activated, permits customers to use any SIP phone associated with the IP-PBX at a remote location. For example, once the Supplemental Feature is activated, employees in an office using the XO One IP-PBX service can unplug their office SIP phone at the end of the day and take it home, where they can place and receive calls as if they were still at the office. The Supplemental Feature can be activated by XO or by the customer.

The Supplemental Feature currently does not support 911 service, because it is not technically or operationally feasible to associate multiple Registered Locations with the IP-PBX with which the SIP phones are associated. Even if it were possible to associate multiple Registered Locations with the IP-PBX, there would be no technically or operationally feasible

⁵ *VoIP E911 Order* at ¶ 37; *see also* 47 C.F.R. § 9.5(b)(2)

⁶ *VoIP E911 Order* at ¶ 42 (footnote omitted).

⁷ *Enforcement Bureau Nov. 7, 2005 Notice*, at 5.

means for updating these Registered Locations to recognize remote use by one or more persons of SIP phones associated with the IP-PBX.

XO is exploring technically and operationally feasible means for ensuring that the Supplemental Feature supports 911 service, but none are available at this time. However, the sophisticated business users who subscribe to the XO One fixed IP-PBX service offered by XO do not rely on the Supplemental Feature for 911 functions, or use it to replace primary line services at remote locations. Therefore, the public interest would be served by granting XO a limited waiver of Section 9.5(b)(2) so that XO can continue to market and accept customers for the Supplemental Feature until XO can implement a technically and operationally feasible means for ensuring that the Supplemental Features supports 911 service. Accordingly, XO respectfully requests that the Commission waive the requirement that XO cease marketing and accepting new customers for the Supplemental Features built in to the IP-PBXs used to provide XO's IP-PBX service.

II. DISCUSSION

Pursuant to Section 1.3 of the Commission's rules, the Commission may waive any provision of its rules where "good cause" is shown.⁸ The Commission has concluded that good cause exists where "special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and a waiver would be consistent with the principles underlying the rule."⁹ Indeed, the United States Court of Appeals for the D.C. Circuit has stated

⁸ 47 C.F.R. § 1.3.

⁹ *1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, *Ameritech Corporation Telephone Operating Companies' Continuing Property Record Audit, et. al.*, CC Docket No. 99-117, *GTE Telephone Operating Companies Release of Information Obtained During a Joint Audit*, AAD File No. 98-26, Further Notice of Proposed Rulemaking, FCC 00-119, at note 8 (rel. April 3, 2000) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164

that granting a waiver may be appropriate if: (1) special circumstances support a finding that strict adherence would not be in the public interest; and (2) a grant of waiver would not undermine the underlying policy objectives of the rule in question.¹⁰ As explained below, good cause exists for granting the waiver requested herein.

A. Special Circumstances Warrant a Deviation from the 911 Call Routing Requirement

Special circumstances warrant a deviation from the requirement that XO cease marketing and accepting new customers for the Supplemental Feature built in to the IP-PBXs used by XO to provide its XO One IP-PBX service until XO can route all 911 calls originated from remotely used SIP phones to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's location. Critically, the XO One IP-PBX service, which is a fixed VoIP service that XO provides to the location at which an IP-PBX is located, fully satisfies the Commission's E911 rules, including the requirements of Section 9.5(b)(2) of the Commission's rules.¹¹ The Supplemental Feature is not a stand-alone service, but rather a feature built in to the IP-PBXs used to provide the XO One IP-PBX service.

The built-in Supplemental Feature of the IP-PBXs used by XO to provide its XO One IP-PBX service can be activated either by XO or by the subscribers themselves. Once activated, the Supplemental Feature permits multiple SIP phones associated with the IP-PBX to be used simultaneously at various remote locations. Although the XO One fixed IP-PBX service offered by XO is fully 911 compliant at the Registered Location where it is the primary line

(D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (1969); *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983)).

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ 47 C.F.R. § 9.5(b)(2). *See also VoIP E911 Order* at ¶37. The XO's IP-PBX service includes access to the existing E911 wireline system in exactly the same manner as existing traditional wireline telecommunications services.

service, it is not technically or operationally feasible to associate multiple Registered Locations with the service at this time, and thus there is no way to update the Registered Location to recognize simultaneous remote use by one or more persons of SIP phones associated with the IP-PBX. Specifically, at this time, XO cannot detect remote use of SIP phones associated with an IP-PBX for which the Supplemental Feature has been activated, and, even if it were possible to associate multiple Registered Locations for the same service, XO would not be able to determine which of the Registered Locations originated the 911 call.

The purpose of the Supplemental Feature is not to enable a primary line at the remote location, but rather to supplement the XO One fixed IP-PBX service by permitting users to maintain a virtual presence at the Registered Location (*e.g.*, the office) while they are at another location that already has a primary line with 911 service (*e.g.*, the home). The sophisticated business users who subscribe to the XO One fixed IP-PBX service do not rely on the Supplemental Feature for 911 functions, or use it to replace primary line services at remote locations. Therefore, requiring XO to cease marketing and accepting new customers for the Supplemental Feature that is built in to all of the IP-PBXs used to provide its XO One IP-PBX service is not necessary to further the Commission's 911 goals, and it would be fundamentally inconsistent with the Commission's policies regarding competition and deregulation.

B. Granting a Waiver Is Consistent with the Policy Objectives Underlying the 911 Call Routing Requirement

Granting XO's temporary waiver request is consistent with the underlying policy objectives of the Commission in implementing its 911 call routing requirement for

interconnected VoIP customers.¹² The Commission adopted this requirement in furtherance of the Congressional mandate to promote the public safety and to “encourage and facilitate the prompt deployment throughout the United States of seamless, ubiquitous, and reliable end-to-end infrastructures for public safety.”¹³ In doing so, the Commission has sought to ensure that 911 is clearly established as “the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911.”¹⁴ Because the XO One IP-PBX service is fully compliant with the FCC’s E911 rules, waiver of Section 9.5(b)(2) of the Commission’s rules with respect to the Supplemental Feature built into the IP-PBXs used to provide the XO One IP-PBX service will not undermine the Commission’s goal of ensuring ubiquitous availability of VoIP E911. Moreover, grant of the waiver will not harm any customers since the sophisticated business users who subscribe to the XO One fixed IP-PBX service do not rely on the Supplemental Feature for 911 functions, or use it to replace primary line services at remote locations.

C. Granting XO’s Waiver is in the Public Interest

It is in the public interest to grant XO’s waiver request. In *WAIT Radio v. FCC*, the Court stated that considerations of “hardship, equity, or more effective implementation of overall policy, [are] considerations that an agency cannot realistically ignore.”¹⁵ Where

¹² 47 C.F.R. § 9.5(a)-(c). *See also VoIP E911 Order* at n.2, (citing specific examples where consumers were unable to reach emergency services through the use of E911 provided via VoIP).

¹³ *VoIP E911 Order* at ¶ 4 (citing to 47 U.S.C. § 151, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat 1286, § 2(b) (1999)).

¹⁴ Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat 1286, § 3 (1999) (codified at 47 U.S.C. § 251(e)).

¹⁵ *WAIT Radio*, 418 F.2d at 1159.

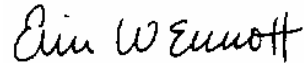
unnecessary to achieve the FCC's E911 goals, requiring strict compliance with the FCC's E911 rules to prohibit use of a supplemental feature built into the equipment used to provide a fully compliant interconnected VoIP service would cause unnecessary and undue hardship to the service provider and its customers. As demonstrated above, prohibiting XO from marketing or accepting new customers for the Supplemental Feature of the XO One IP-PBX service would do nothing to further the goal of the FCC to ensure ubiquitous availability of VoIP E911, particularly where traditional 911 or E911 will be available at any location where the Supplemental Feature would permit a SIP Phone associated with the IP-PBX to be used remotely.

The limited waiver requested in this Petition would allow XO to continue to market and accept new customers for the Supplemental Feature while XO explores a technically and operationally feasible means for recognizing multiple Registered Locations for the same service. Granting this Petition is in the public interest because it allows XO to continue to promote public safety and provide reliable access to 911 services for its customers without undue hardship to XO or its customers.

III. CONCLUSION

For the foregoing reasons, XO respectfully requests that the Commission grant this Petition for Waiver and allow XO to continue to market and accept new customers for the Supplemental Feature built into the IP-PBX's associated with XO's IP-PBX service.

Respectfully submitted,



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Dated: December 20, 2005

CERTIFICATE OF SERVICE

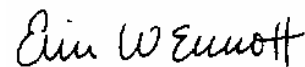
I, Erin W. Emmott, hereby certify that on this 20th day of December, 2005, the XO Communications Services, Inc. Petition for Waiver of the Commission's Rules on VoIP E911 Implementation, was filed electronically through the FCC's Electronic Comments Filing System (ECFS) and copies were served on the following as indicated:

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